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## UNITED STATES PATENT AND TRADEMARK OFFICE

*Ex parte* BARRY GAMMON

Decided: December 16, 2008

McCARTHY, *Administrative Patent Judge.*

## STATEMENT OF THE CASE

1       The Appellant appeals from rejections of claims relating to a socket  
2 for loosening and tightening connection elements. (Spec. 2, ¶ 6.) The  
3 Appellant's socket includes a receiving region in which the connector  
4 element is captured and a socket driver port positioned within the perimeter  
5 of a socket body. The Appellant asserts that this arrangement ensures  
6 maximum mechanical advantage when using the socket without  
7 compromising device flexibility in confined spaces. (Spec. 8, ¶ 31.)

8       The sole independent claim on appeal recites:

9  
10       1.       A socket for rotatably loosening or tightening  
11 a connection element, the socket comprising a socket  
12 body having a centerline and a perimeter, a first face,  
13 an opposing second face and a receiving slot  
14 extending from the first face to the second face,  
15 wherein the receiving slot includes a receiving region  
16 adjacent to the first face for receiving and capturing  
17 therein the connection element, the receiving region  
18 having a centerline that is not in alignment with the  
19 centerline of the socket body and includes a step  
20 against which the connection element rests during  
21 rotation of the socket body, wherein the second face  
22 includes a socket driver port therein that does not  
23 extend through to the first face of the socket body,  
24 the socket driver port having a centerline that is not  
25 in alignment with the centerline of the socket body,  
26 and wherein the socket driver port is positioned  
27 within the perimeter of the socket body and does not  
28 extend above the first face.

ISSUES

The Appellant seeks to show that the Examiner erred in:

rejecting claims 1-6 under 35 U.S.C. § 112, ¶ 2 (2002) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellant regards as the invention;

rejecting claims 1 and 2 under 35 U.S.C. § 102(b) (2002) as being anticipated by Johnson (US 2,715,347, issued Aug. 16, 1955);

rejecting claims 3-6 under 35 U.S.C. § 103(a) (2002) as being unpatentable over Johnson and Farnan (US Des. 376,521, issued Dec. 17, 1996);

rejecting claims 4 and 5 under § 103(a) as being unpatentable over Johnson and Makovsky (US 5,697,268, issued Dec. 16, 1997); and

rejecting claims 1-6 under § 103(a) as being unpatentable over Higgins (GB 2 266 257 A, publ. Oct. 27, 1993) and Farnan.

The Appellant contends that claims 1-6 are definite because the recitation that the socket driver port does not extend “above” the first face is unambiguous (if superfluous) when read in light of the Specification and the language of claim 1 as a whole. (App. Br. 5.) The Appellant further contends that Johnson, Farnan, Makovsky and Higgins, alone or as combined by the Examiner, fail to disclose or suggest particular elements recited in claims 1-6. (App. Br. 7-13.) The Examiner determines otherwise.

1 The Appellant's contentions raise three issues in this appeal:

2 Has the Appellant shown that the Examiner erred in concluding that  
3 the term "above" as used in claim 1 is sufficiently ambiguous that claims 1-6  
4 as a whole are indefinite? (*Compare* App. Br. 5 with Ans. 7.)

5 Has the Appellant shown that the Examiner erred in finding that  
6 Johnson and Higgins each disclose a socket body having a socket driver port  
7 in a second face and through which the socket driver port does not extend to  
8 the first face? (*Compare* App. Br. 8-9 and 13 with Ans. 8-9 and 11.)

9 Has the Appellant shown that the Examiner erred in concluding that  
10 the teachings of Johnson and Farnan would have suggested modifying  
11 Johnson's socket to add a plurality of stepped polygonal configurations to  
12 the receiving region and wing slots to the first face? (*Compare* App. Br. 9-  
13 10<sup>1</sup> with Ans. 10.)

14

15 FINDINGS OF FACT

16 The record supports the following findings of fact ("FF") by a  
17 preponderance of the evidence.

18 1. Johnson discloses a wrench head formed as an integral  
19 structure. (Johnson, col. 1, ll. 60-64.)

---

<sup>1</sup> The Appellant's Brief actually contends that Johnson and Farnan each fail to describe "stepped polygonal wing slots." (*e.g.*, App. Br. 9-10.) None of the claims on appeal recites "stepped polygonal wing slots." We understand the Appellant to argue that the teachings of Johnson and Farnan fail to suggest a socket having a plurality of stepped polygonal configurations as recited in claim 3 and a plurality of wing slots as recited in claim 4. If the Appellant actually contends that the Examiner determined that Johnson or Farnan describes a socket having "stepped polygonal wing slots," the contention is factually incorrect.

2. Johnson's wrench head includes an annular wall 6 (Johnson, col. 1, ll. 60-64) terminating in a first face. The first face appears as a flat lower surface of the wrench head in the view shown in Johnson's Fig. 4.

3. Johnson's wrench head has a continuous planar second face shown in plan view in Fig. 3. A transverse opening 13 in the second face is squared for receiving the squared pivoted end of a handle extension. (Johnson, col. 2, ll. 27-30.)

4. Johnson's Figs. 3 and 4 show Johnson's wrench head from two directions. The transverse opening 13 is positioned within the outline or perimeter of the wrench head in each view.

5. Johnson's transverse opening 13 extends through a handle receiving shank 12. The handle-receiving shank 12 extends from the side of the wrench head opposite a throat or receiving slot 7. (Johnson, col. 2, ll. 27-30.) Johnson's Figs. 3 and 4 do not show the transverse opening 13 extending through the first face of the wrench head. Instead, Johnson's drawing figures depict the transverse opening positioned to the side of the first face opposite the throat 7. Likewise, Fig. 3 suggests that an axis or centerline of the transverse opening 13 would not align with a vertical axis *B* of the annular wall 6.

6. Johnson's depending annular wall 6 and throat 7 surround a substantially cylindrical cavity 8. The inner wall of the cavity is provided with teeth 9. (See Johnson, col. 1, ll. 64-69.)

7. Johnson's wrench head also includes an inwardly overhanging tension web 10 adjacent the second face. The web 10 overlies a substantial portion of the cavity 8. (Johnson, col. 2, ll. 10-21.) Johnson teaches that the

1 web 10 strengthens the wrench head without adding to the bulk or outside  
2 dimensions of the head. In addition, the web 10 resists the separating forces  
3 when a torsional moment is applied. (Johnson, col. 2, ll. 65-68.)

4 8. Johnson teaches offsetting the vertical axis *A* of the cavity 8  
5 forwardly of the corresponding axis *B* of the annular wall 6. The annular  
6 wall 6 is substantially crescent-shaped, tapering toward the opposed vertical  
7 edges of the throat 7. Johnson teaches that the gradual thickening of the  
8 annular wall 6 toward the side opposite the throat 7 reinforces the socket  
9 body without materially increasing the bulk or outside dimensions of the  
10 body. (Johnson, col. 2, ll. 10-16.)

11 9. Farnan's Figs. 14-19 depict a universal basin socket including  
12 an integral socket body. (See Farnan, Description of Figs. 14-19.)

13 10. Farnan's basin socket as shown in Figs. 14-19 appears to  
14 include a depending annular wall and a throat surrounding a cylindrical  
15 cavity. The basin socket further appears to include a handle-receiving shank  
16 extending from the socket body opposite the throat. The handle receiving  
17 shank is pierced by a square, transverse opening. An inner wall of the cavity  
18 is provided with teeth.

19 11. The inner wall of Farnan's depending annular wall includes a  
20 plurality of stepped polygonal configurations. The annular wall defines a  
21 first face opposite the handle-receiving shank. The first face appears to  
22 include a plurality of wing slots.

23 12. Higgins discloses a spanner attachment 10 including a flat leaf  
24 12 having a recess 14 open at one side 16. (Higgins 3, ll. 4-7.)

13. A comparison of Higgins' Figs. 1 and 2 implies that the recess *I4* extends between two opposed, substantially flat surfaces of a flat leaf *I2* of Higgins' spanner attachment.

14. Higgins' spanner attachment includes a boss 22 forged with the flat leaf 12 in a single piece. Higgins teaches forming the boss 22 with a square socket 24 for removably receiving a conventional socket spanner set. (Higgins 3, ll. 7-12 and 29-31.) The square socket 24 as shown in Fig. 2 of Higgins does not extend into either of the two opposed faces between which the receiving slot extends.

# PRINCIPLES OF LAW

A claim is subject to rejection under section 112, ¶ 2, if the claim fails in “particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” Compliance with the definiteness requirement of section 112, ¶ 2 ensures adequate notice to those of ordinary skill in the art concerning the scope of issued claims; encourages others to design around the claimed subject matter; and assists others in assessing whether the claimed subject matter is patentable. *United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 236 (1942); *General Elec. Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 369 (1942). In light of these policies, the language of a claim satisfies § 112, ¶ 2 only if “one skilled in the art would understand the bounds of the claim when read in light of the specification.” *Exxon Research & Eng’ring Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001).



1           “To anticipate a claim, a prior art reference must disclose every  
2 limitation of the claimed invention, either explicitly or inherently.” *In re*  
3 *Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). A claim under  
4 examination is given its broadest reasonable interpretation consistent with  
5 the underlying specification when determining whether the subject matter of  
6 the claim is either anticipated or obvious. *In re American Acad. of Science*  
7 *Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Limitations not expressed  
8 in the language of the claims cannot be imported from the specification. *E-*  
9 *Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003). The  
10 latter rule implies that we look to the language of a claim rather than to  
11 advantages of the claimed subject matter asserted in the specification in  
12 determining whether a prior art reference anticipates the subject matter of  
13 the claim. Even unexpected uses, properties or advantages alleged to satisfy  
14 needs long felt in the art cannot render a known article of manufacture  
15 patentable under § 102(b). *Schreiber*, 128 F.3d at 1477.

16           A claim is unpatentable for obviousness under § 103(a) if “the  
17 differences between the subject matter sought to be patented and the prior art  
18 are such that the subject matter as a whole would have been obvious at the  
19 time the invention was made to a person having ordinary skill in the art to  
20 which said subject matter pertains.” In *Graham v. John Deere Co.*, 383 U.S.  
21 1 (1966), the Supreme Court set out factors to be considered in determining  
22 whether claimed subject matter would have been obvious:

23  
24           Under § 103, the scope and content of the prior art  
25 are to be determined; differences between the prior  
26 art and the claims at issue are to be ascertained;  
27 and the level of ordinary skill in the pertinent art

1 resolved. Against this background, the  
2 obviousness or nonobviousness of the subject  
3 matter is determined. Such secondary  
4 considerations as commercial success, long felt but  
5 unsolved needs, failure of others, etc., might be  
6 utilized to give light to the circumstances  
7 surrounding the origin of the subject matter sought  
8 to be patented. As indicia of obviousness or  
9 nonobviousness, these inquiries may have  
10 relevancy.  
11

12 *Id.*, 383 U.S. at 17-18.

13 In order to reject a claim under § 103(a), an examiner must establish  
14 at least a “prima facie” case that the claimed subject matter would have been  
15 obvious. Once the examiner produces prima facie evidence that the claimed  
16 subject matter would have been obvious, the applicant may present  
17 additional evidence tending to rebut the examiner’s conclusion that the  
18 claimed subject matter would have been obvious. If the applicant presents  
19 additional evidence to rebut the examiner’s conclusion, the examiner must  
20 consider all of the evidence anew. If the evidence presented by the examiner  
21 and any evidence presented by the applicant, considered anew, demonstrate  
22 that the claimed subject matter would have been obvious to one of ordinary  
23 skill in the art, the claim is properly rejected under § 103(a). *In re Piasecki*,  
24 745 F.2d 1468, 1472 (Fed. Cir. 1984).  
25

## 26 ANALYSIS

### 27 A. *The Rejection of Claims 1-6 Under Section 112, ¶ 2*

28 During prosecution, a claim susceptible of more than one reasonable  
29 interpretation may be indefinite if the scope of the claim differs significantly

1 depending on which of the reasonable interpretations one adopts. *Ex Parte*  
2 *Miyazaki*, No. 2007-3300, [http://www.uspto.gov/web/offices/dcom/bpai/](http://www.uspto.gov/web/offices/dcom/bpai/prec/fd073300.pdf)  
3 [prec/fd073300.pdf](http://www.uspto.gov/web/offices/dcom/bpai/prec/fd073300.pdf) at 11-12 (BPAI Nov. 19, 2008). In claim 1, the Appellant  
4 recites “a socket driver port therein that does not extend through to the first  
5 face of the socket body.” The Appellant further recites that the socket driver  
6 port “does not extend above the first face.”

7 The Appellant reasonably contends that the term “does not extend  
8 above the first face” may be interpreted merely to require that the second  
9 face and the socket driver port lie entirely on the same side of the first face.<sup>2</sup>

10 Under the Appellant’s interpretation, the term “does not extend above the  
11 first face” is surplusage: Since the Appellant elsewhere recites that the  
12 second face is opposite the first face, the socket driver port is in the second  
13 face and the socket driver port does not extend through to the first face, the  
14 socket driver port and the second face must lie entirely on the same side of  
15 the first face in order to meet the other limitations of the claim.

16 The Appellant’s interpretation of claim 1 is not the only reasonable  
17 interpretation, however. In claim 1, the Appellant recites that the second  
18 face is opposite the first face. The Appellant does not recite that the second  
19 face is coextensive with the first face along a centerline between the first and  
20 second faces. In addition, the Appellant points to no language in claim 1 or  
21 any passage in the Specification clearly limiting the orientation of the socket

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<sup>2</sup> In Figs. 2 and 7 of the Appellant’s Specification, for example, the figure numbers “2/10” and “7/10” would be “above the first face” as interpreted here.

1 body relative to the earth.<sup>3</sup> Hence, the Appellant points to nothing in the  
2 claim language or the Specification which would preclude interpreting the  
3 term “above” to refer to the upward direction relative to the earth when the  
4 socket body is laid on the two tips of the socket body adjacent the receiving  
5 slot.<sup>4</sup>

6 Claim interpretations which give meaning to all terms of the claim are  
7 preferred. *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed.  
8 Cir. 2007). When the socket body of claim 1 is laid on the two tips of the  
9 socket body adjacent the receiving slot and the height of the second face in  
10 this orientation is greater than the height of the first face, the recitation that  
11 the socket driver port does not extend above the first face constitutes a  
12 limitation separate from the recitation that the socket driver port does not  
13 extend through to the first face of the socket body.

14 Therefore, the recitation that the socket driver port “does not extend  
15 above the first face” either constitutes a separate limitation or surplusage  
16 depending on which of two reasonable interpretations one adopts. Claim 1  
17 is indefinite due to ambiguity. The Appellant does not contend that the  
18 language of any of claims 2-6 resolves the ambiguity in the language of  
19 claim 1. On the record before us, the Appellant has not shown that the  
20 Examiner erred in rejecting independent claims 1-6 under section 112, ¶ 2.

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<sup>3</sup> Although the Appellant’s Specification at one point describes the views shown in Figs. 3, 6 and 8 as “top views” (*see* Spec. 4, ¶ 13, 16 and 17), this description is not carried forward through the Specification.

<sup>4</sup> In Figs. 3, 6 and 8 of the Appellant’s Specification, for example, the figure numbers “3/10,” “6/10” and “8/10” would be “above the first face” as interpreted here.

1           *B.     The Rejection of Claims 1 and 2 Under § 102(b)*

2           The Appellant argues claims 1 and 2 for purposes of the rejection  
3 under § 102(b). (App. Br. 13). Claim 2 stands or falls with representative  
4 claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007). Johnson discloses a wrench  
5 head formed as an integral socket body. (FF 1.) Johnson's socket body  
6 includes a second face extending across an entire surface of the socket body.  
7 (FF 3.) Johnson's socket body also includes a socket driver port (13 in Figs.  
8 3 and 4) in the second face. (*Id.*)

9           The Appellant recites in claim 1 that the socket driver port is  
10 positioned within the "perimeter" of the socket body. Given its broadest  
11 reasonable interpretation, the "perimeter" of the socket body is an outline of  
12 the socket body when viewed from some direction. The Appellant points to  
13 no claim language or passage from the Specification which clearly limits the  
14 socket driver port to be positioned within the outline of some feature of the  
15 socket body, such as the perimeter of the first or second face: To the  
16 contrary, the Appellant recites that the socket driver port is positioned within  
17 the "perimeter of the socket body." Johnson discloses a socket having a  
18 socket driver port positioned within the perimeter of the socket body. (FF  
19 4.)

20           The Appellant recites in claim 1 that the socket driver port does not  
21 extend through to the first face of the socket body. Johnson discloses this.  
22 (FF 5.)

23           The Appellant's arguments and a declaration submitted in the  
24 application may suggest that the embodiment depicted in Fig. 3 of the  
25 Appellant's Specification has advantageous properties not shared by

1 Johnson's wrench head. Nonetheless, Johnson discloses all elements recited  
2 in claim 1. Having asserted no persuasive arguments in their briefs, the  
3 Appellant has not shown on the record before us that the Examiner erred in  
4 rejecting claims 1 and 2 under § 102(b).

5

6 *C. The Rejections of Claims 3-6 Under Section 103(a)*

7 The Appellant argues claims 3-6 together for purposes of the rejection  
8 under § 103(a). (App. Br. 9-11). Claims 5 and 6 stand or fall with  
9 representative claims 3 and 4. § 41.37(c)(1)(vii). The Examiner has shown  
10 that the subject matter of claims 3-6 would have been prima facie obvious in  
11 view of Johnson and Farnan. The Examiner also has shown that the subject  
12 matter of claims 4 and 5 would have been prima facie obvious in view of  
13 Johnson and Makovsky.

14 The Appellant recites in claim 3 that the receiving region of the socket  
15 body includes a plurality of stepped configurations. The Appellant recites in  
16 claim 4 that the receiving region of the socket body includes a plurality of  
17 wing slots. The Examiner finds that the wrench head of Figs. 3 and 4 of  
18 Johnson differs from the subject matter of claims 3 and 4 in that Johnson's  
19 wrench head lacks these elements. Farnan displays these elements. (FF 11.)

20 "[I]f a technique has been used to improve one device, and a person of  
21 ordinary skill in the art would recognize that it would improve similar  
22 devices in the same way, using the technique is obvious unless its actual  
23 application is beyond his or her skill." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.  
24 Ct. 1727, 1740 (2007). Comparing the wrench head of Figs. 3 and 4 of  
25 Johnson with the basin socket of Figs. 14-19 of Farnan reveals that the

1 wrench head and the basin socket are similar in structure. (*Compare* FF 1, 2,  
2 5 and 6 *with* FF 9 and 10.)

3       The Examiner reasons that one of ordinary skill in the art would have  
4 recognized the stepped polygonal configuration and the slots as  
5 improvements providing Farnan's basin socket the capacity for driving  
6 different sized fasteners and fasteners having wings. The Examiner further  
7 reasons that one of ordinary skill in the art would have found it obvious to  
8 improve Johnson's wrench head by adding the same stepped polygonal  
9 configuration and slot. (Ans. 5.) The Examiner's reasoning has rational  
10 underpinnings in the similarity between Johnson's wrench head and  
11 Farnan's basin socket as well as in the inferences which one of ordinary skill  
12 in the art would be capable of drawing concerning the structure shown in the  
13 drawing figures of Farnan.

14       The Appellant does not appear to contend that adding these elements  
15 to Johnson's wrench head was beyond the ordinary level of skill in the art of  
16 forging and die making. In addition, the Appellant does not contend that  
17 adding these elements to Johnson's wrench head produced unpredictable  
18 results. In particular, the Appellant has not identified any testimony in the  
19 L'Heureux Declaration which would demonstrate that the socket of claims  
20 3-6 produces results which could not have been predicted by one of ordinary  
21 skill in the art. The Appellant has not shown that the Examiner failed to  
22 demonstrate *prima facie* the obviousness of the subject matter of claims 3-6  
23 in view of the teachings of Johnson and Farnan.

24       The Appellant points out that a primary object of Johnson's invention  
25 is to provide a wrench side wall resistant to forces tending to spread the open

1 end of the wrench. (*See* App. Br. 10, citing Johnson, col. 1, ll. 36-41.)  
2 Johnson further teaches that an inwardly overhanging tension web resists the  
3 separating forces when a torsional moment is applied. (FF 7.) One of  
4 ordinary skill in the art would have recognized that adding the stepped  
5 polygonal configuration shown in Figs. 14-19 of Farnan to Johnson's  
6 wrench head would have provided additional torsional resistance to the  
7 wrench head in a manner similar to the resistance provided by the tension  
8 web: Farnan's stepped polygonal configuration provides a "meatier" web  
9 than Johnson's when turning one of the larger diameter nuts over which the  
10 stepped polygonal receiving region would fit. Therefore, Johnson's  
11 "primary object" supports the Examiner's prima facie showing that the  
12 subject matter of claims 3-6 would have been obvious in view of Johnson  
13 and Farnan.

14       The Appellant contends that neither Johnson nor Makovsky teaches or  
15 suggests a socket including a receiving region having a centerline that is not  
16 in alignment with a centerline of the socket body. (App. Br. 10-11.)  
17 Johnson teaches this feature. (FF 8.) The Appellant also contends that  
18 neither Johnson nor Makovsky teaches or suggests a socket driver port  
19 having a centerline that is not in alignment with the centerline of the socket  
20 body. (App. Br. 10-11.) This feature is apparent from Fig. 3 of Johnson.  
21 (FF 5.) The Appellant has not shown that the Examiner failed to  
22 demonstrate prima facie the obviousness of the subject matter of claims 4  
23 and 5 in view of the teachings of Johnson and Makovsky.



1           The Appellant submitted a “Statement of Roland L’Heureux under 37  
2 C.F.R. § 1.132” [“L’Heureux Declaration”].<sup>5</sup> When such evidence is  
3 presented it is our duty to consider the entire record anew to determine  
4 whether the claimed subject matter would have been obvious. *See, e.g., In*  
5 *re Eli Lilly & Co.*, 902 F.2d 943, 945 (Fed. Cir. 1990). On the other hand,  
6 we do not cease to be a panel of appellate review merely because we are  
7 presented with a record including evidence submitted by the Appellant  
8 which may bear on the patentability of one or more claims. It is our duty to  
9 determine whether the Appellant has shown that the Examiner erred in  
10 rejecting claims 3-6. Any argument not included in the briefs is waived, 37  
11 C.F.R. § 41.37(c)(1)(vii) (2007), even if the argument might be apparent on  
12 the face of a declaration or other evidence in the record. While we must  
13 consider the entire record including the evidence submitted by the Appellant  
14 anew, we do so with an eye only to determining whether the Examiner erred  
15 in a manner asserted by the Appellant.

16           The Appellant cites the L’Heureux Declaration only in the context of  
17 arguing that Johnson does not anticipate claims 1 and 2 under § 102(b). To  
18 the extent that the L’Heureux Declaration may be read as asserting that  
19 Johnson fails to disclose a socket body having a second face including a  
20 socket driver port therein (*see* L’Heureux Decl. 3, ¶ 13), the declaration is  
21 not convincing. The declarant neither offers a construction of the claim

---

<sup>5</sup> On June 13, 2008, a separate panel of this Board remanded a previous appeal involving the present application to the Examiner with an order for the Examiner to clarify the Examiner’s position regarding the L’Heureux Declaration. That Order implicitly held that the L’Heureux Declaration is of record in the application. This panel follows that holding.

1 language nor applies properly construed claim language to the disclosure of  
2 Johnson. To the extent that the Appellant might rely on the L'Heureux  
3 Declaration as evidence of nonobviousness, the Appellant does not provide  
4 us any guidance in applying this evidence to show that the Examiner erred.  
5 In particular, the Appellant fails to link the declarant's opinion that a socket  
6 apparently identical to the embodiment of Figs. 2 and 3 of the Appellant's  
7 Specification provides adequate mechanical advantage to remove basin nuts  
8 without requiring as much room to manipulate as Johnson's wrench head  
9 (*see* L'Heureux Decl. 3, ¶ 13) to any secondary consideration identified in  
10 *Graham*. In view of these defects, the Appellant has not demonstrated that  
11 the L'Heureux Declaration is entitled to significant weight in determining  
12 patentability.

13 Having now considered all the evidence presented by the Appellant  
14 and weighing the entire record pertaining to the rejection of claims 3-6 under  
15 § 103(a) as being unpatentable over Johnson and Farnan, we conclude that  
16 the evidence for obviousness outweighs the evidence thereagainst. Having  
17 now weighed the entire record pertaining to the rejection of claims 4 and 5  
18 under § 103(a) as being unpatentable over Johnson and Makovsky, we  
19 likewise conclude that the evidence for obviousness outweighs the evidence  
20 thereagainst. The Appellant has not shown on the record before us that the  
21 Examiner erred in rejecting claims 3-6 under § 103(a).

22  
23 *D. The Rejection of Claims 1-6 Under Section 103(a) as*  
24 *Being Unpatentable Over Higgins and Farnan*

25 The Appellant contends that Higgins does not teach a second face  
26 having a socket driver port therein. In other words, the Appellant contends

1 that “the socket driver port of Higgins extends beyond the face of the socket  
2 body. One useful feature of the present invention is that its driver port is  
3 contained within, and therefore does not extend beyond the surface of, the  
4 face of the socket body which faces the socket.” (App. Br. 13.)

5 Higgins does not disclose a socket body having a second face having a  
6 socket driver port therein (FF 14). The Appellant recites in claim 1 that the  
7 receiving slot extends from the first face to the second face. Comparing  
8 Higgins’ Figs. 1 and 2 implies that the receiving slot *14* extends between  
9 two opposed, substantially flat surfaces of a flat leaf *12* of Higgins’ spanner  
10 attachment (FF 13). Hence, Higgins does not teach a second face having a  
11 socket driver port therein unless a socket driver port is formed in one of the  
12 two opposed surfaces of the flat leaf *12*. The square socket *24* or socket  
13 driver port is formed in a boss *22* projecting beyond a surface of the flat leaf  
14 *12* (FF 14). The square socket *24* as shown in Fig. 2 of Higgins is not in  
15 either of the two opposed face between which the receiving slot extends (FF  
16 14).

17 The Examiner cites Farnan only for the teachings of stepped  
18 polygonal configurations and wing slots (Ans. 6). As such, Farnan does not  
19 overcome the deficiency in the teachings of Higgins. The Examiner has not  
20 pointed us to anything in the combined teachings of Higgins and Farnan  
21 which would have suggested a second face including a socket driver port  
22 therein. The Appellant has shown on the record before us that the Examiner  
23 erred in rejecting claims 1-6 under § 103(a) as being unpatentable over  
24 Higgins and Farnan.

CONCLUSIONS

The Appellant has not shown that the Examiner erred in concluding that the term “above” as used in claim 1 is sufficiently ambiguous that claims 1-6 as a whole are indefinite.

The Appellant has not shown that the Examiner erred in finding that Johnson discloses a socket body having a socket driver port in a second face and through which the socket driver port does not extend to the first face.

The Appellant has not shown that the Examiner erred in concluding that the teachings of Johnson and Farnan would have suggested modifying Johnson’s socket to add a plurality of stepped polygonal configurations to the receiving region and wing slots to the first face.

The Appellant has shown that the Examiner erred in finding that Higgins discloses a socket body having a socket driver port in its second face. In view of this deficiency, the Appellant has shown that the Examiner erred in concluding that the teachings of Higgins and Farnan would have suggested sockets as recited in claims 1-6.

Therefore, the Appellants have not shown on the record before us that the Examiner erred in rejecting claims 1-6 under 35 U.S.C. § 112, second paragraph as indefinite, claims 1 and 2 under § 102(b) as being anticipated by Johnson; claims 3-6 under § 103(a) as being unpatentable over Johnson and Farnan; and claims 4 and 5 under § 103(a) as being unpatentable over Johnson and Makovsky. The Appellants have shown that the Examiner erred in rejecting claims 1-6 under § 103(a) as being unpatentable over Higgins and Farnan.

DECISION

We AFFIRM the decision to reject claims 1-6.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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